



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/595,256	06/15/2000	Yoshinori Kumasaka	SHC0012	8977

7590

03/31/2004

Baker & Daniels  
Suite 800  
111 East Wayne Street  
Fort Wayne, IN 46802

EXAMINER

REICHLE, KARIN M

ART UNIT

PAPER NUMBER

3761

DATE MAILED: 03/31/2004

17

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/595,256

Applicant(s)

KUMASAKA, YOSHINORI

Examiner

Karin M. Reichle

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 17 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 December 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

1. The amendment filed 12-17-03, specifically claim 8, line 5 thereof, did not comply with 37 CFR 1.121. The claim was brought into compliance by the Examiner with red ink.

#### ***Drawings***

2. The drawings were received on 12-17-03. These drawings are not approved by the Examiner. See also the PTO-948. In Figure 2 an 18 still appears above one of the occurrences of 18B and the arrow does not extend all the way to the other of the occurrences of 18B.

#### ***Claim Rejections - 35 USC § 112***

3. Claims 1-6 and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, are the “a longitudinal end” on line 11 and “an upper edge” on line 23 one and the same?

#### ***Claim Language Interpretation***

4. Since a specific definition of the claim terminology “a major portion” has not been specifically defined, the usual or common, i.e. dictionary, definition, will be used, i.e. “Of a greater number, quantity or extent”, i.e. more than 50%.

***Claim Rejections - 35 USC § 102***

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 1-6 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Kimberly Clark, PCT '550.

See Figures, page 2, lines 18-35, page 2, line 53-page 3, line 3, page 3, lines 27-41, page 3, line 45-page 4, line 7, page 5, line 35-page 6, line 48 and claims.

Claims 1-3: the front waist region is 14, 84, 68, the rear waist region is 16, 86, 70, the crotch region is 18, the waist opening is 24, the leg openings are 26, the covering zone is 14 and 68 and/or 16 and 70, the elastic zone is 64 and/or 66, the longitudinal edge or upper edge, as best understood, is 40, the first member and second member as claimed on lines 17-23 of claim 1, claim 2 and claim 3 are disclosed explicitly or in the references set forth at page 2, line 52-page 3, line 3, page 3, lines 27-41, page 4, lines 1-7, page 5, line 48-page 6, line 48 (It is noted that the EP reference to Taylor is the same as the Van der Wielen reference set forth on page 2). With regard to lines 23-25 of claim 1, as interpreted in light of the paragraph bridging pages 5-6 of the instant specification, the gathers are formed along the entire length when the second member is attached because the second member has gathers and extends along the entire length. The specification discloses that the length of the elastic zone is the same as that of the combined first and second members in the uncontracted state of the first member. The second member portion of '550 has gathers along the length thereof due to its being a composite elastic material, see portions of reference cited which teach the composition of the first and second members of the elastic zone and claim 7 of '550, and the entire length of at least one of the waist regions will

Art Unit: 3761

have gathers due to the attachment of the gathered second member to the upper edge of the covering zone. In the embodiment where there is a recoverable portion, gathering will also be formed due to recovery thereof. It is noted that the gathers in claim 1 and those in claim 3 are deemed to be the same. With regard to the language of lines 15-16 of claim 1 see Figure 7D of '550, i.e. more than 50% or a major portion of the elastic zone width extends beyond end 40.

Claims 4-6: It is noted that the covering area as claimed still does not need to encompass the entire circumferential direction of said at least one of said front and rear waist regions. It is also noted that the length in this claim is not required to be the initial length as is recited in claim 3. Note elements 84, 86, 90, 92 and page 6, lines 20-22 of '550. With regard to claim 6, the covering zone is stretchable due to the elasticity of the side sections 68, 70 but has a higher stress stretch in a portion of the covering zone extending along the elastic zone, e.g. 84, 86, and of the same width than that of the elastic zone when stretched by 3-20 %, see, e.g., page 6, lines 10 and 43, i.e. since a covering zone portion is inelastic the stretch stress thereof will necessarily be higher than that of the elastic zone which is elastic.

Claim 8: see page 7, lines 6-9, claims 1 and 4 of '550, and portions cited supra, as well as page 3, lines 6-7, i.e. the leg band can be a composite elastic material.

### ***Response to Arguments***

7. Applicant's remarks with respect to the informalities have been noted but are either deemed moot in that the issue has not been reraised or deemed not persuasive for the reasons discussed supra. Applicant's remarks with regard to the prior art have been considered but are deemed not persuasive. As set forth supra, contrary to Applicant's arguments Figure 7D shows the waistband 32 extending beyond the top edge 40 of the pant body.

***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

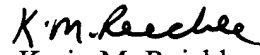
Any new grounds of rejection were necessitated by the amendments to claim 1.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (703) 308-2617. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703) 308-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Karin M. Reichle  
Primary Examiner  
Art Unit 3761

KMR  
March 29, 2004